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May 9, 2011

Hon. Joseph F. Bianco, U.S.D.J.
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

RE: *Richard Gravina, et al. v. National Enterprise Systems, Inc.*
E.D.N.Y. Case No. 2:09-cv-02942-JFB-AKT

Dear Judge Bianco:

I am co-counsel for the Plaintiffs. I am writing this letter to request leave of Court to file a reply brief in response Defendant's recently filed opposition to Plaintiffs' Consent Motion to Certify Class. [Doc. 76]. In short, the Court's minutes from the hearing on May 12, 2011, provided Defendant an opportunity to file an objection to Plaintiffs' motion for class certification on or before May 6, 2011, but is silent as to whether Plaintiffs may file a reply brief. [Doc. 73].

Importantly, as directed by Your Honor, Plaintiffs counsel shared an advance copy of their motion for class certification with Defendant's counsel to see if they had any issues with the motion prior to its filing that they believe need to be correct. After reviewing Plaintiffs' motion and making revisions which Plaintiffs' accepted, Defendant's counsel stated in two separate e-mails that they had no objections to Plaintiffs' motion, suggested that it be filed as an "unopposed" motion, and then emphatically stated that they would "not oppose" the motion. [See attached e-mails between counsel dated April 25, 2011].

On April 28, 2011, the Florida Interveners filed a motion for a pre-motion conference. [Doc. 75]. In response thereto, Defendant filed an objection to Plaintiffs' motion for class certification, which raises new issues that were never discussed with the Court or Plaintiffs prior to Plaintiffs' filing their motion. As such, Plaintiffs and the putative class members will be unfairly if they are denied an opportunity to respond to Defendant's Objections to their motion for class certification.

Accordingly, Plaintiffs respectfully request that Your Honor grant them leave to file a reply brief in response Defendant's opposition to their Consent Motion to Certify on or before May 13, 2011.

Respectfully submitted,

s/William F. Horn

William F. Horn

via ECF Filing Only

cc: All Counsel of Record *via ECF Filing*

From: Israel, Dave [disrael@sessions-law.biz]
Sent: Monday, April 25, 2011 7:11 PM
To: William F. Horn; Van Hoose, Dayle
Cc: Robert Arleo; Andrew
Subject: RE: Gravina v NES

HoudiniInboxGUID: 22938
HoudiniMatterGUID: 170
HoudiniMatterLabel: NES - Gravina -- 951-170
Time?: 0

We are not joining in the motion- we just have no opposition.



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From: William F. Horn [\[mailto:bill@wfhllegal.com\]](mailto:bill@wfhllegal.com)
Sent: Monday, April 25, 2011 6:10 PM
To: Van Hoose, Dayle; Israel, Dave
Cc: 'Robert Arleo'; 'Andrew'
Subject: RE: Gravina v NES

Dayle,

Please see the attached. We will be filing shortly.

I have attached a copy of a Joinder of Motion which we would ask that you file after we file our Motion. An alternative is to re-caption it as a Non-Opposition to Motion. Either way, we would appreciate you filing something so there is no confusion on the part of the Court.

Thanks.

William F. Horn
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From: Van Hoose, Dayle [<mailto:dvanhoose@sessions-law.biz>]
Sent: Monday, April 25, 2011 5:35 PM
To: William F. Horn; Israel, Dave
Cc: Robert Arleo; Andrew
Subject: RE: Gravina v NES

Bill,

Just a couple of minor things:

1. You corrected the 1MM potential class member number in ¶ 1.07(a), but there are couple other places that still say 2MM.
2. For ¶ 5.03(5), technically there are still 2 lawsuits in Florida. The paragraph should probably say “except for 2 Florida class actions which are currently subject to a Motion for Consolidation and Motion for Class Certification . . .”

The proposed order looks fine. With these corrections, you can go ahead and file. I think you can just include the word “unopposed” in the title and the court will know we are not filing an opposition, but if you think it will help for us to file a notice of non-opposition, we can probably do that. Let me just confirm with our local counsel, Kevin.

Let me know if you need anything further.

Dayle

From: William F. Horn [<mailto:bill@wfhlegal.com>]
Sent: Monday, April 25, 2011 4:59 PM
To: Van Hoose, Dayle; Israel, Dave
Cc: 'Robert Arleo'; 'Andrew'
Subject: RE: Gravina v NES

Motion attached. Order to follow.

William F. Horn

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From: Van Hoose, Dayle [\[mailto:dvanhoose@sessions-law.biz\]](mailto:dvanhoose@sessions-law.biz)
Sent: Monday, April 25, 2011 4:41 PM
To: William F. Horn; Israel, Dave
Cc: Robert Arleo; Andrew
Subject: RE: Gravina v NES

Bill,

Are you sending me the revised motion and proposed order for review?

Dayle



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From: William F. Horn [\[mailto:bill@wfhllegal.com\]](mailto:bill@wfhllegal.com)
Sent: Monday, April 25, 2011 2:00 PM
To: Israel, Dave; Van Hoose, Dayle
Cc: Robert Arleo; Andrew
Subject: Gravina v NES

Sorry for the short notice. Attached is the Class Certification Motion we are planning on filing today. Would you like to review it prior to it being filed – that way, maybe you can join the Motion?

Regards.

William F. Horn
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